

ESTATE OF JOSEPH WYATT

IBIA 82-56

Decided July 15, 1983

Appeal from an order after reopening issued by Administrative Law Judge Sam E. Taylor in Indian Probate No. H-81-51, IP BI 81 B 82, which amended the original order determining heirs.

Reversed.

1. Indian Probate: Reopening: Generally

Reopening of closed Indian probate proceedings is granted to allow the Department to investigate whether allegations, raised by a person who did not have knowledge of the original hearing and has diligently pursued the case since learning of potential rights, support the conclusion that the prior determination constitutes a manifest injustice that can be administratively corrected.

2. Indian Probate: Reopening: Generally

The Board of Indian Appeals has consistently held that petitions to reopen closed Indian trust estates require compelling proof that delay in requesting relief was not occasioned by lack of diligence on the part of the petitioning party.

3. Indian Probate: Evidence: Insufficiency of--Indian Probate: Reopening: Generally

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

APPEARANCES: Amos E. Black III, Esq., Anadarko, Oklahoma, for appellant. Counsel to the Board: Kathryn A. Lynn.

## OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

Delia Mae Wyatt Sherck (appellant) has sought review by the Board of Indian Appeals of an August 9, 1982, order issued by Administrative Law Judge Sam E. Taylor after the reopening of the estate of Joseph Wyatt (decendent). This order amended the original order determining heirs issued by the Department on May 4, 1951. The August 9 order found that Billy and Danny Schuessler (appellees) were decendent's natural children and held that they were entitled to inherit his entire estate. For the reasons discussed below the Board reverses this decision.

### Background

Joseph Wyatt, Kiowa Allottee No. 306, died on February 7, 1949, at the age of 51. A hearing into decendent's estate was held by Examiner of Inheritance R. J. Montgomery on March 16, 1951. Decendent's brother, Thomas Wyatt, testified that decendent was married once, to Martha Ridge, and that no children were born of this marriage, which was dissolved by court decree in 1936. Thomas Wyatt further testified that decendent had no children by any other woman and had not adopted any children. Two other witnesses, Walter Hammert and F. J. Cannon, 1/ neither of whom had any interest in the estate, corroborated Thomas Wyatt's testimony.

By order dated May 4, 1951, the examiner found that decendent died intestate and that his estate should be divided among his brother, Thomas Wyatt; his sister, Emma Belle Wyatt (Moses); and three nephews, Murrell, Oscar, and William P. Willis.

A petition to reopen this estate, filed by appellees, was received by Administrative Law Judge Daniel S. Boos on November 12, 1981. Appellees alleged that they were the sons of decendent. Persons opposing the petition were given until February 22, 1982, to file their opposition. No oppositions were filed. 2/

A hearing was held before Administrative Law Judge Sam E. Taylor on June 23, 1982. The only testimony at this hearing was given by Danny Schuessler. The testimony and documentary evidence, including two birth certificates, a divorce decree, and an adoption decree, established that on July 5, 1947, twin sons were born to an Indian named Joe Wyatt and Mary Lou Rosales, a non-Indian. The boys were named Joseph Walter Wyatt and William Robert Wyatt. On February 20, 1948, a divorce was granted to Mary Wyatt from Joe Wyatt by the District Court of Caddo County, Oklahoma. Custody of the couple's twin boys, named Danny Joe Wyatt and Billy Joe Wyatt, 3/ was given to the mother. Mary Wyatt subsequently married Raymond L. Schuessler, who, by a January 10, 1951, decree of the County Court of Caddo County,

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1/ F. J. Cannon was identified in the record as a law clerk employed by the Federal Government.

2/ Appellant states that she did not oppose the petition because the notice did not explain the effect reopening might have on property she inherited from her father, Thomas Wyatt, decendent's brother.

3/ The circumstances of these name changes are not set forth in the record.

Oklahoma, adopted the two boys. The decree states that the boys were the legitimate children of "Joe Wyatt, now deceased." The boys are allegedly enrolled members of the Kiowa Tribe. 4/

By order dated August 9, 1982, the Administrative Law Judge found at page 1 that "Danny Schuessler and Billy Schuessler, being the natural sons of the decedent, are his heirs to the exclusion of the hereinabove named brother, sister, and nephews." Accordingly, he ordered the estate distributed to Danny and Billy Schuessler. 5/

Decedent's brother, Thomas Wyatt, had died before this order following reopening. His estate, including the interest received from Joseph Wyatt, was distributed to his daughter, Delia Mae Wyatt Sherck, appellant in the present case. The effect of the August 9, 1982, order was to remove trust property inherited by appellant from her uncle through her father's estate in order to redistribute that property to appellees. Appellant, therefore, appealed this decision.

### Discussion and Conclusions

[1] Re-opening of closed Indian probate proceedings is granted to allow the Department to investigate whether allegations, raised by a person who did not have knowledge of the original probate hearing and who has diligently pursued the case since learning of potential rights, support the conclusion that the prior determination constitutes a manifest injustice that can be administratively corrected. See 43 CFR 4.242(h); Estate of Nellie Brown, 11 IBIA 1 (1982); Estate of Walter George and Minnie Racehorse George Snipe, 9 IBIA 20 (1981).

Appellant states that appellees knew at least as of May 26, 1971, that they might be the sons of decedent. This allegation is supported by documentary evidence in the form of a letter from the Superintendent of the Anadarko Agency, BIA, to the Hearing Examiner conducting the probate of decedent's estate. See Addendum I to appellant's brief. This letter shows that prior to May 26, 1971, appellees had contacted BIA regarding their possible relationship to decedent. Appellees have not disputed that they were aware that they might be the sons of decedent in 1971. In fact, their petition to reopen this estate shows that they had knowledge of the possible relationship for at least 10 years.

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4/ No documentary proof of enrollment is included in the record.

5/ The Board notes that the order does not discuss the effect of appellees' adoption on their right to inherit from their natural father under Oklahoma laws of intestate succession. See Estate of Richard Doyle Two Bulls, 11 IBIA 77 (1983). Such a discussion, setting forth the Administrative Law Judge's conclusions of law, is required by the Administrative Procedure Act, 5 U.S.C. §§ 554-557 (1976). The Board has held that Indian probate proceedings are to be conducted in accordance with this Act. See Estate of George Swift Bird, 10 IBIA 63 (1982); Estate of Lucille Mathilda Callous Leg Ireland, 1 IBIA 67, 78 I.D. 66 (1971). In the absence of such a discussion, neither the parties nor the Board knows whether this significant legal question was considered below. Estate of San Pierre Killakhan, 1 IBIA 299, 305, 79 I.D. 583, 585 (1972).

[2] The Board has consistently held that petitions to reopen closed estates require compelling proof that delay in requesting relief was not occasioned by lack of diligence on the part of the petitioning party. See Estate of Katie Crossguns, 10 IBIA 141 (1982); Snipe, *supra*. Appellees in this case have made no attempt to explain their delay of over 10 years in seeking review of decedent's estate. Therefore, the Board must find that this petition should have been denied on the grounds that petitioners failed to pursue their possible rights with due diligence.

Had the Board reached the merits of appellees' case, it would also have been required to find against them. Appellees presented evidence, through their birth certificates, that their natural father was an Indian named Joe Wyatt, who was 45 years old on July 5, 1947, the date of their births. No evidence other than the similarity of names was presented tending to show that this Joe Wyatt and decedent were the same person. Furthermore, although the record does not disclose the date of decedent's birth, it does show that decedent's mother died in 1900 and decedent was 51 at the time of his death on February 7, 1949. Both of these facts are inconsistent with the representation that decedent was 45 in 1947. The Board recognizes that birthdates and ages are often speculative among older persons. However, this unexplained discrepancy is indicative of the fact that appellees' proof that decedent was their father is circumstantial at best.

Appellees also presented no reason for discrediting the testimony of decedent's brother and two disinterested witnesses, given at the original probate hearing in 1951, that decedent was married only once and had no children. Even if the Board were to assume, which it would not, that decedent's brother may have had same ulterior motive for not informing the examiner of the existence of children of the decedent, no such motive could be ascribed to the other witnesses, who stood to gain nothing by deceit.

[3] The burden of proving that the initial decision in the probate of a deceased Indian's estate was erroneous is on the person seeking reopening. Estate of Frank Pays, 10 IBIA 61 (1982). Were the Board to reach the merits in this case, it would find that appellees have not shown that the Joe Wyatt who is listed as their father on their birth certificates and the Joseph Wyatt whose estate is here at issue are the same person.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the August 9, 1982, order issued after reopening, which amends the May 4, 1951, order determining heirs is reversed and the May 4, 1951, order is reinstated.

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Jerry Muskrat  
Administrative Judge

We concur:

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Wm. Philip Horton  
Chief Administrative Judge

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Franklin D. Arness  
Administrative Judge